ASSIGNMENT OF LIENS. — Common law liens depend for their validity on the detention of goods solely as security for the payment of the lienholder's claim. By an unauthorized sale or pledge of the goods, by a voluntary delivery to the true owner, or by a wrongful claim of title, they are regarded as dealt with for a purpose inconsistent with this sole right, and the lien is destroyed. Since, then, the goods may be held only for the payment of a personal claim, it follows that a lien is a merely personal right, and therefore not assignable so as to vest a legal right to the lien in the assignee. A recent case holds that any attempted assignment for the benefit of another is not only invalid, but destroys the lien. *Glascock* v. *Lemp*, 59 N. E. Rep. 342 (Ind.). A livery stable keeper, having a lien on a horse for the payment of his board, assigned the claim, together with the horse as security therefor, to the defendant. The owner replevied the horse, and the court held that the purported assignment constituted no defence, as it destroyed the lien. The decision is in accord with the few cases in point. *Ruggles* v. *Walker*, 34 Vt. 468. It is difficult to see on what legal principle the lien can be held destroyed by such a transaction. The assignment of the chose in action gives the assignee, in contemplation of law, merely a right to sue on the claim in his assignor's name. Even though by statute the assignee may prosecute the suit in his own name, the change is one of procedure merely, and the chose in action is still legally held by the assignor. Therefore, when a chose in action is assigned, together with goods on which a lien exists for its protection, whatever may be the rights to the custody of the goods as between assignor and assignee, the latter must be considered as detaining them from the owner solely for the protection of his assignor's legal right to the chose in action. In a suit by the owner of the goods against the assignee for their detention, such as in the principal case, there should be the same defence as is accorded any lienholder's bailee, for both may truly say that the goods have never been treated otherwise than as security for the original lienholder's claim.

A further question is suggested, namely, whether the assignee would be entitled to hold the goods as against his assignor. Clearly the parties impliedly agreed that the assignee should have exclusive right to possession until the lien debt was satisfied. As any retaking would, therefore, constitute a breach of the contract under which the custody of the goods was transferred, the assignee ought to be allowed to assert his rights to possession, like any bailee entitled to possession for a period of time. Such a dealing with the goods, as before stated, would not destroy the lien, because it would be entirely consistent with a detention solely as security for the chose in action. Thus to an action for the goods by the owner, the assignee could interpose the lien as a defence, to an action by the assignor, his contract right to possession. In accord with this view are several *dicta*. *Pugh* v. *Bigler*, 62 Pa. 242; *Buckner* v. *McIlroy*, 31 Ark. 631. To call such a transaction an assignment of a lien is strictly inaccurate, since the lien, being legally unassignable, would still exist in the assignor. The right to the actual custody of the goods alone would be transferred, yet as the results of an actual legal assignment would thus be practically attained, and as the phrase is similarly used in connection with choses in action, it will serve the present purpose.

Ever since the first recognition of liens in the time of Edward IV., then known as rights to detain, their effect has been regarded as beneficial. By the recognition of custom, by equity, and by statute, the common law

rights, or rights analogous, have been widely extended. Such an assignment of liens as is suggested seems merely to give proper effect to such rights. It can make no difference to the owner of the goods to whom he must pay his indebtedness, and whether the goods are in the hands of an assignee or a bailee, he can still hold the original lienholder responsible for their safety. On the other hand, it may be of the utmost importance to the lienholder that, by an assignment which gives his assignee all the rights he himself possesses, he can at once raise funds on a just debt. Under these circumstances, since no distortion of legal principles nor perversion of policy is involved, such assignments of liens ought to be recognized.

RECENT CASES.

AGENCY — DAMAGES — PUNITIVE DAMAGES FOR AGENT'S TORT. — The plaintiff came to the defendant's place of business with a wagon load of goods to sell. The defendant's servant ordered him to leave the premises, and on his refusal, struck him in an unjustifiable manner. *Held*, that in an action against the master, punitive damages were properly awarded. *Boyer* v. *Coxen*, 48 Atl. Rep. 161 (Md.).

The doctrine of punitive damages is opposed to sound legal principle, but is nevertheless supported by the weight of authority. See 2 GREENL. EV., 16th ed., § 253, n. 2. The object of such an award is to punish the defendant and thus protect society against wanton violations of personal rights and social order; therefore, some wilful or malicious wrongdoing by the defendant is generally held necessary. *Voltz* v. *Blackmar*, 64 N. Y. 440. The express authorization of the servant's tort by the master, and perhaps the employment of a palpably unfit man, may be regarded as making him sufficiently culpable; otherwise however punitive damages should not be awarded against him. *Burns* v. *Campbell*, 71 Ala. 271, 292. The principal case rests upon the theory that all the servant's acts within the scope of his employment are, in the contemplation of the law, the acts of the master. Punitive damages however are given, not as compensation for the injury resulting from the act, but as punishment for the evil motive, and of that the principal here is innocent. Accordingly, even if we accept the doctrine of punitive damages, the principal decision seems unjustifiable. *Grund* v. *Van Vleck*, 69 Ill. 478; *Haines* v. *Schultz*, 50 N. J. Law, 481.

AGENCY — IMPLIED WARRANTY OF AUTHORITY — FORGED POWER OF ATTORNEY. — A stockbroker, acting in good faith under a forged power of attorney purporting to be signed by one Oliver, effected a transfer of stock standing in the Bank of England in Oliver's name. The bank, having made good the loss to Oliver, sued the stockbroker. *Held*, that the stockbroker is liable on an implied warranty of authority, even though the bank had equally good means of knowing of the forgery. *Oliver* v. *Bank of England*, 17 T. L. R. 286.

This decision is of importance to the business world, and is interesting in its application of the well-known doctrine of *Collen* v. *Wright*, 8 E. & B. 647. Theoretically it would seem that the action should be in tort, there being no contract. As there is no such action for innocent misrepresentation however, courts have implied a warranty of authority. *Firbank's Executors* v. *Humphreys*, 18 Q. B. D. 54. This doctrine, though generally acknowledged, has been modified where the agent makes a full disclosure of the facts concerning his authority. *Lilly* v. *Smales*, [1892] 1 Q. B. 456; *Newman* v. *Sylvester*, 42 Ind. 106. The principal case, it would seem, does not come within this exception. On similar facts the doctrine of implied warranty has been held to apply. *Boston, etc., R. R.* v. *Richardson*, 135 Mass. 473. Though such an application extends the doctrine of *Collen* v. *Wright*, *supra*, to cases where one not in reality an agent purports to act as such, it would seem to be correct. The rule which the principal case establishes is practical and in accordance with sound business principles, though in fact it is but a veiled exception to a settled principle in the law of torts. *Farmers' Coöp. Trust Co.* v. *Floyd*, 47 Oh. St. 525.